

APPEAL NO. 041641
FILED AUGUST 30, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 9, 2004. The hearing officer determined that the respondent (claimant herein) was entitled to supplemental income benefits (SIBs) for the first, second, third, and fourth quarters. The appellant (carrier herein) files a request for review arguing that the hearing officer erred in finding the claimant worked in a job relatively equal to his ability to work. The claimant responds that the decision of the hearing officer should be affirmed.

DECISION

Affirmed.

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

It is undisputed that the claimant worked part time during the qualifying periods for the first, second, third, and fourth quarters. It is also undisputed that there was medical evidence that the claimant was under restrictions, including restrictions that he only work part time, during these qualifying periods. The carrier argues that the claimant should have been able to earn more during the qualifying periods and did not look for additional work during the qualifying periods.

Among other requirements, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. The preamble to Rule 130.102(d)(1) states, "This standard eliminates arguments regarding the rate of pay for the job because it ties the finding to whether or not the employment is appropriate considering the injured employee's ability to work. A person who has actually been successful in returning to work within his or her ability will not be required to continue additional job search efforts." In Texas Workers' Compensation Commission Appeal No. 020370, decided April 4, 2002, we reversed a hearing officer's determination that the claimant was not entitled to SIBs based upon the determination that the claimant failed to satisfy the good faith requirement by returning to a job relatively equal to his ability to work. In that case we stated,

The preamble to Rule 130.102(d)(1) eliminates arguments as to the rate of pay of the injured employee's job. Thus, to the extent that the hearing officer's determination that the claimant's job during the qualifying periods...was not a job that was relatively equal to his ability to work

based upon some belief that the claimant could have been paid a higher wage, he erred in so finding.

Indeed, as we have previously noted, the focus of the "relatively equal" inquiry in Rule 130.102(d)(1) is not on whether the wages are the same, but rather on whether the employment was relatively equal in terms of hours worked and whether the job is within the claimant's restrictions. Texas Workers' Compensation Commission Appeal No. 000702, decided May 22, 2000; Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000.

Conflicting evidence was presented on the disputed issue. Whether or not the claimant's employment was relatively equal to his ability to work presented a question of fact for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's determination on this issue is so against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Nor is there any merit to the carrier's argument that the claimant was not entitled to SIBs for the first quarter because he only began working after the beginning of the first quarter. The Appeals Panel has held that if a claimant complies with Rule 130.102(d)(1) and has returned to work in a position that is relatively equal to the injured employee's ability to work during *any* portion of the qualifying period, that will satisfy the good faith job search requirement. Texas Workers' Compensation Commission Appeal No. 030298, decided March 10, 2003.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas Knapp
Appeals Judge